



उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक G.A. 360/ सन् 200 (

आदेश पत्रक (पूर्वानुबद्ध)

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| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश<br><b>APPELLANT:</b><br>(In Jail)                                                                                                                                                                                                                                                                                                                                                                                                                                                          | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अंतिम आदेश<br>Hariram @ Bhothana,<br>S/o Kartik Ram Dhanuvar,<br>Aged about 42 years,<br>R/o Village Lamer Boirhapara,<br>Police Station Kota,<br>Distt. Bilaspur (C.G.) |
|                                    | <b>RESPONDENT:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | - Versus -<br>State of Chhattisgarh,<br>Through the Superintendent,<br>Central Jail, Bilaspur (C.G.)                                                                                                                   |
|                                    | <b>Present:</b><br>Mr. Akhil Agarwal, counsel for the appellant.<br>Mr. D.K. Gwalre, Additional Public Prosecutor for the State/respondent.                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                        |
|                                    | <b>Division Bench:</b> Hon'ble Mr. L.C. Bhadoo and<br>Hon'ble Mr. Dhirendra Mishra, JJ.                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                        |
|                                    | <b>ORAL JUDGMENT</b><br>(Delivered on 23 <sup>rd</sup> April, 2007)                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                        |
|                                    | <b>L.C. BHADOO, J.</b><br>1. This appeal is directed against the judgment of conviction and order of sentence dated 15 <sup>th</sup> March, 2001 passed by the Sessions Judge, Bilaspur in Sessions Trial No.224/2000, whereby learned Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and pay a fine of Rs.2,000/-, in default of payment of fine to further undergo R.I. for six months. |                                                                                                                                                                                                                        |

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## आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अंतिम आदेश |
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|                                    | <p>2. Case of the prosecution is that on 13-4-2000, Teejram, Shiv Prasad, Amar Singh &amp; accused Hariram were sitting near the house of accused Hariram, all of them collected Rs.40/- and asked Hariram to bring liquor. Hariram brought liquor which was consumed by all of them. Baliram (since deceased) again asked Hariram to bring liquor on which accused Hariram became angry and said that he is not their servant, but Baliram again insisted and in that process they started quarrelling. Deceased Baliram slapped Hariram once on which Hariram started abusing Baliram. Teejram, Shiv Prasad &amp; Amar Singh intervened and separated them. In the mean time, the accused brought bow &amp; arrow from his house, stopped Baliram and said that where he is going after assaulting him, on which Teejram &amp; Baliram stopped. Hariram shot arrow at Baliram which pierced into his chest. Baliram fell down and died instantaneously. Teejram attempted to take out the arrow from the chest of Baliram, but he failed in his attempt.</p> <p>3. The matter was reported in Police Station: Kota by Teejram (PW-3) at about 3.30 p.m. on which the F.I.R. (Ex.P-3) was registered. Merg intimation Ex.P-4 was also given by Teejram. The Investigating Officer seized the iron arrow from Teejram which was snatched by him from accused Hariram. He left for the scene of occurrence and prepared the inquest (Ex.P-7) on the body of Baliram. Body of Baliram was sent for post-mortem examination to Community Health Centre, Kota, where Dr. S.K. Shrivastava (PW-7) conducted post-mortem on 14-4-2000 and noticed that the arrow was pierced into the chest near 7<sup>th</sup> rib, the wound was in the size of 1" x ½" x ½" which damaged the liver, as a result of the injury, liver was ruptured and the doctor opined that the</p> |                                                          |

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## आदेश पत्रक (पूर्वानुबन्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अंतिम आदेश |
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|                                    | <p>cause of death was shock as a result of haemorrhage. The Investigating Officer prepared the site plan Ex.P-11. He seized plain soil and blood stained soil under Ex.P-12 from the place of occurrence. The accused was arrested and at his instance, bow was seized under Ex.P-14.</p> <p>4. After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Bilaspur, who in turn committed the case to the Sessions Judge, Bilaspur where the prosecution examined nine witnesses in order to establish charge against the accused. Statement of the accused was recorded under section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent, he has been falsely implicated in the crime.</p> <p>5. Learned Sessions Judge after hearing counsel for respective parties, convicted and sentenced the accused as aforementioned.</p> <p>6. We have heard Mr. Akhil Agarwal, learned counsel for the appellant and Mr. D.K. Gwalre, learned Additional Public Prosecutor on behalf of the State/respondent.</p> <p>7. Mr. Akhil Agarwal has not disputed the homicidal death of Baliram. Moreover, in view of the ocular evidence of Teejram (PW-3), Shiv Prasad (PW-4) &amp; Amar Singh (PW-5) and the medical evidence of Dr. S.K. Shrivastava (PW-7) who has stated that he conducted post-mortem on the body of Baliram on 14-4-2000 and the death of Baliram</p> |                                                          |

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आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अंतिम आदेश |
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|                                    | <p>was homicidal in nature as a result of shock &amp; haemorrhage, it is established that the death of Baliram was homicidal in nature.</p> <p>8. As far as involvement of the accused/appellant in the crime in question is concerned, Teejram (PW-3), Shiv Prasad (PW-4) &amp; Amar Singh (PW-5) are the witnesses who were at the place of occurrence at the time of commission of crime and consumed liquor along with the deceased and the accused. All the three witnesses have categorically stated that they collected Rs.40/-, then Baliram asked accused Hariram to bring liquor, he brought liquor, thereafter, all of them consumed the same. Thereafter, deceased Baliram again asked accused Hariram to bring liquor on which Hariram became angry and said that he is not their servant, he will not bring liquor. The deceased slapped the accused and in that process, the accused brought bow &amp; arrow and shot arrow at the deceased which hit on his chest and pierced into the chest and the deceased died instantaneously. Defence has not been able to bring anything on record in cross-examination of these three witnesses, which makes the evidence of these witnesses unreliable or untrustworthy. Therefore, involvement of the accused in the crime in question has been established and the same is based on legal, clinching and ocular evidence.</p> <p>9. Mr. Akhil Agarwal argued that the accused attacked the deceased in a sudden fight on the spur of the moment without preparation and premeditation in a heat of passion, therefore, he is entitled for Exception 4 to Section 300 of the I.P.C.</p> |                                                          |



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| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अंतिम आदेश |
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|                                    | <p>10. On the other hand, Mr. Gwalre supported the judgment of the trial Court.</p> <p>11. In order to appreciate the argument advanced by Mr. Akhil Agarwal, we have scrutinized the evidence of the eyewitnesses and the prosecution case. Evidence of the prosecution witnesses is to the effect that all these persons in the first instance collected Rs.40/-, asked the accused to bring liquor which he brought, that was consumed by all of them, thereafter again, Baliram (deceased) asked Hariram (accused) to bring liquor on which the accused became angry and said that he is not their servant, whereupon Baliram slapped Hariram which enraged Hariram. Hariram all of a sudden brought bow &amp; arrow, shot arrow at Baliram which hit on his chest and pierced into the chest, even ruptured the liver and Baliram died instantaneously.</p> <p>12. Therefore, from the above facts, it is established that there was quarrel in which first the <sup>deceased</sup> <del>accused</del> slapped the <sup>deceased</sup> <del>deceased</del> and the accused all of a sudden brought arrow and shot at the deceased. From the above circumstances, it is established that the offence was committed in a heat of passion in a sudden quarrel without any preparation and premeditation, as such, the accused is entitled for the benefit of Exception 4 to Section 300 of the I.P.C.</p> <p>13. In the result, conviction and sentences imposed upon the accused/ appellant under Section 302 of the I.P.C. cannot be sustained, therefore, conviction and sentences imposed upon him are set aside, he is acquitted of the said charge, instead thereof, he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I.</p> |                                                          |

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## आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश                                                                                                                                                                                                                                                               | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अंतिम आदेश |
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| Soma                               | <p>for seven years. It is stated that the accused is in detention since 15-4-2000, thereby he has already completed seven years of the jail sentence. The accused be set at liberty forthwith, if not required in any other case.</p> <p>Sd/-<br/><b>L.C.BHADOO</b><br/>Judge</p> | <p>Sd/-<br/><b>Dhirendra Mishra</b><br/>Judge</p>        |